

APPEAL NO. 032464
FILED NOVEMBER 5, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on August 19, 2003. The hearing officer determined that the appellant's (claimant) compensable injury of _____, does not extend to and include an injury to the low back.

The claimant appeals, contending that the hearing officer's decision is "so against the great weight of the evidence that it is manifestly unjust and clearly wrong." The claimant asks us to reverse the decision and find that the compensable injury extends to and includes the low back. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

It is undisputed that the claimant, a construction worker, sustained a compensable injury on _____, when a large pipe fell on his shoulder, knocking him to the ground and crushing his foot. The carrier accepted a foot injury. The claimant had a previous back injury in 1985, resulting in a laminectomy at L5-S1. The claimant contends that he began complaining of back pain immediately after the _____, incident. The first documented mention in the record of the claimant's back occurs in Dr. D's medical record of September 5, 2002, wherein Dr. D simply notes that he will refer the claimant to a back specialist. In his February 14, 2003, report, Dr. L, opines that the claimant's back pain is caused by L4-5 foraminal stenosis. In his April 23, 2003, report, Dr. P, reports that the back pain is probably related to the claimant's degenerative disc disease, spondylosis, and grade I spondylolisthesis of L5 and S1. He says some of the changes are postoperative and whether the other changes are postoperative is "less apparent." In response to the claimant's query, Dr. P stated, "with what I have to go by, I feel there is very little doubt about the cause and effect. Since he was not having problems before, I do feel that the injury...resulted in his current problems." Dr. K said in his October 29, 2002, report, "[a]s far as determining whether this was caused by the accident, there is no way for sure to determine...certainly getting hit with a metal pipe in the shoulder and across his toes may have aggravated his back. Certainly, he may have had back pain from the previous surgery to his back. There is no way to tell for sure." The designated doctor, Dr. O, who was assigned to assess the claimant's foot, said regarding the claimant's back in his April 22, 2003, report, "whether or not that is compensable is not up to me to decide.... It is possible and actually very likely that the on-the-job injury may have some pre-existing component. However, it is also very likely that the on-the-job injury may have re-exacerbated his previous condition. The degree of exacerbation is difficult to determine at this time."

The medical evidence was clearly conflicting in regard to the disputed issue. The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). The Appeals Panel does not reweigh the evidence and only reviews the hearing officer's decision based on the record developed at the CCH. Section 410.203.

We have reviewed the complained-of determinations and conclude that the hearing officer's determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, supra.

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **NORTHERN INSURANCE COMPANY OF NEW YORK** and the name and address of its registered agent for service of process is

**GARY SUDOL
9330 LBJ FREEWAY, SUITE 1200
DALLAS, TEXAS 75243.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Elaine Chaney
Appeals Judge